

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Criminal Revision No.51 of 1996

Date of decision: 08.02. 2007

Gurdev Singh

-----Appellant.

Vs.

Sucha Singh & Others.

-----Respondents.

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE A.N. Jindal**

Present: Mr. Kuldeep Sanwal, Advocate.

Adarsh Kumar Goel, J.

This revision petition has been filed by the complainant against acquittal of the respondents of the charges under Section 326/325/323/34 IPC.

Case of the prosecution is that on 22.10.1987 at 6.30 P.M., Darshan Singh and Gurdev Singh were standing in front of the house of Darshan Singh when accused Sucha Singh, Mangal Singh and Sharam Singh armed with Dangs and Sukhdev Singh @ Shiv Singh armed with Chavi came there and raised a lalkara that Darshan Singh and Gurdev Singh be taught a lesson for their feeling proud of themselves. Shiv Singh gave a Chavi blow to Darshan Singh on his head, Sucha Singh gave dang blows on the left shoulder of Darshan Singh and Mangal Singh gave dang blows on right ankle of Darshan

Singh. Sharam Singh also gave lathi blow to Gurdev Singh on his forehead. Mangal Singh gave a lathi blow to Gurdev Singh hitting on the thumb of his left hand as well as on his finger. The injured raised an alarm 'Mar Ditta, Mar Ditta' (Killed, Killed), which attracted Ajit Singh son of Partap Singh, on which, the accused ran away.

Dr. Surjit Singh, PW-1 medico-legally examined Darshan Singh and found following injuries:-

- "1. An incised wound 6x1 cm in the middle into bone deep on the scalp in the left parietal region. 5.5 cm from forehead hair line running backward, underlying bone was cut partially. Bone cut was 3.5x0.5 cm in the middle.
2. A contusion 10x3 cm on the upper part of left scapular region. Tenderness and swelling of the underlying tissue.
3. A contusion with overlying abrasion irregular in shape. Contusion was 4.5x2.5 cm on the medial side of right ankle with tenderness and swelling of the ankle. Advised x-ray right ankle A.P. lateral view.
4. An abrasion 4 cm x 1 cm on the medial side of left leg 6 cm above ankle joint.
5. Another abrasion 2 cm x 1.5 cm on the medial side of left leg. 4 cm above injury no.4."

He also medico-legally examined Gurdev Singh and found following injuries:-

- "1. A lacerated wound irregular in shape 1 cmx0.5 cm on the forehead just below hair line 2 cm from middle with swelling and tenderness. Swelling and tenderness of underlying tissue. Swelling was 5.3 cm in dimensions would only skin deep.

2. Swelling the tenderness of right hand in thumb and index finger region of metacarpals. Movements of both these fingers were restricted and painful advised x-ray right hand AP lateral view.
3. There was an abrasion 3x0.5 cm on the dorsal aspect of left thumb in its metacarpal region. There was underlying swelling and movements were slightly restricted.”

Darshan Singh was carried to Primary Health Centre, Bham and on receiving a message from there, ASI Balbir Singh reached there and recorded the statement of Darshan Singh on 23.10.1987, on which, FIR was registered. ASI Balbir Singh went to the place of occurrence, prepared rough site plan and after completing the investigation, challaned the accused persons.

The prosecution, apart from examining Dr. Surjit Singh as PW-1, examined PW-2 Darshan Singh, PW-3 Gurdev Singh and PW-4 ASI Balbir Singh, the Investigating Officer.

After considering the evidence on record, the trial Court held the case of the prosecution to be proved and convicted all the accused under Section 326/325/323/34 IPC and awarded maximum of RI for one year. Other sentences were to run concurrently.

The accused persons preferred an appeal. The appellate Court acquitted the accused persons only on the ground that in the statement under Section 313 Cr.P.C., the fact that injury No.1 on the person of Darshan Singh was with a sharp-edged weapon, was not put to the accused and having regard to the fact that a period of seven

years had elapsed, it was not considered proper to remand the case. On this short ground, conviction was set-aside.

Learned counsel for the petitioner submitted that the view taken by the appellate Court was not correct. In absence of any prejudice having been shown to have been caused, setting aside of conviction on the ground that a particular question was omitted to be put in the statement under Section 313 Cr.PC., was not called for. He submitted that the order of the appellate Court be set-aside and the matter be remanded to the appellate Court for fresh decision.

We find merit in the contention raised. It is well-settled that though every inculpatory material has to be confronted to the accused under Section 313 Cr.P.C. and failure to do, may result in miscarriage of justice, but every omission or defect in recording a statement under Section 313 Cr.P.C. cannot be held to vitiate proceedings and either the Court may ignore material which was not confronted to the accused or may require the accused to furnish explanation, depending upon the facts and circumstances of each case. In the present case, it could not have been said that any prejudice was caused to the accused by the omission pointed out by the trial Court. We may refer to the judgment of the Hon'ble Supreme Court in **Shivaji Sahabrao Bobade v. State of Maharashtra** AIR 1973 SC 2622, wherein it was observed:-

“16.... It is trite law, nevertheless fundamental, that the prisoners attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this

area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, CrPC, the omission has not been shown to have caused prejudice to the accused. In the present case, however, the High Court, though not the trial court has relied upon the presence of blood on the pants of the blood group of the deceased. We have not been shown what explanation the accused could have offered to this chemical finding particularly when we remember that his answer to the question regarding the human blood on the blade of the knife was I do not know. Counsel for the appellants could not make out any intelligent explanation and the blood testimony takes the crime closer to the accused. However, we are not inclined to rely over much on this evidentiary circumstance, although we should emphasise how this inadvertance of the trial court had led

to a relevant fact being argued as unavailable to the prosecution. Great care is expected of Sessions Judges who try grave cases to collect every incriminating circumstance and put it to the accused even though at the end of a long trial the Judge may be a little fagged out.”

Even though we disapprove the view taken in the impugned judgment, we are not inclined to remand the case, having regard to the fact that the incident is 20 years old and we cannot straightaway convict the accused persons in a revision against acquittal.

For the above reasons, revision petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

February 08, 2007
ashwani

(A. N. JINDAL)
JUDGE